United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

76-6199 & 77-4176

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GENERAL MOTORS CORPORATION, A Corporation of the State of Delaware,

Plaintiff-Appellee,

--against--

THE LONG ISLAND RAIL ROAD COMPANY, A Corporation of the State of New York,

Defendant-Appellant.

THE LONG ISLAND RAIL ROAD COMPANY,

Third Party Defendants-Appellees,

--against--

THE UNITED STATES OF AMERICA and THE INTERSTATE COMMERCE COMMISSION,

Third Party Defendants-Appellees,

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,

Intervening Third Party Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

BRIEF OF INTERVENING THIRD PARTY DEFENDANT - APPELLEE, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

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February, 1978

THE LONG ISLAND RAIL ROAD COMPANY,

Appellant,

--against--

UNITED STATES OF AMERICA and THE INTERSTATE COMMERCE COMMISSION,

Appellees.

ON REVIEW FROM THE INTERSTATE COMMERCE COMMISSION.

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THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

STATEMENT OF THE CASE

The National Industrial Traffic League concurs with the Statement of the Case, the Statement of Facts, and the Statement of Issues Presented contained in the brief of plaintiff General Motors Corporation (GM) except to note that the League's intervention in these Court proceedings is limited to No. 76-6199. 1/ The League was not a party to the proceedings before the I.C.C. under review in No. 77-4176, although it fully supports the position of General Motors and the respondents in that case.

1/ The League intervened in the Court below as a third-party defendant, to support the decision and order of the I.C.C. in its Docket No. 35790, in which the League had been a party to the administrative proceedings.

ARGUMENT

The only issue raised by the Long Island with regard to the action of the Court below and the I.C.C. is whether or not they have properly interpreted Section 1(9) of the Interstate Commerce Act. (L.I.R.R. Brief, pages 10-11). However, there is a threshold question as to whether and to what extent this Court may substitute its interpretation of the statute for that of the administrative agency to which Congress has delegated the function of administering it.

This matter was referred to the Commission because of the requirements of the doctrine of primary administrative jurisdiction. 1/ The rationale for the doctrine can be found in Mr. Justice Frankfurter's cogent analysis in Far East Conference v. United States, 342 U.S. 570, 574-75 (1952):

> "The Court thus applied a principle, now firmly established, that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure.
>
> "It is significant that this mode of accommodating the complementary roles of courts and administrative agencies in the enforcement of law was originally applied in a situation where the face of the statute gave the Interstate Commerce Commission and the courts

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1/ Jt. App. 17a-18a.

concurrent jurisdicition. 'The pioneer work of Chief Justice White' in Texas & Pacific R. Co. v. Abilene Cotton Oil Co. 204 U.S. 426, as his successor characterized it, 257 U.S. xxvi, was one of those creative judicial labors whereby modern administrative law is being developed as part of our traditional system of law. In this case we are merely apply the philosophy which was put in memorable words by Mr. Justice (as he then was) Stone:

> '. . . court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action. Neither body should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim.' United States v. Morgan, 307 U.S. 183, 191."

This rationale was cited by Mr. Justice Brennan in Federal Maritime Board v. Isbrandtsen Co., 356 U.S. 481, 497 (1958), and then he added, at page 498:

> "It is, therefore, very clear that these cases, while holding that the Board had primary jurisdiction to hear the case in the first instance, did not signify that the statute left the Board free to approve or disapprove the agreements under attack. Rather, those case recognized that in certain kinds of litigation practical considerations dictate a division of functions between court and agency under which the latter makes a preliminary, comprehensive investigation of all the facts, analyzes them, and applies to them the statutory scheme as it is construed. Compare Denver Union Stock Yard Co. v. Producers Livestock Marketing Asso., 356 U.S. 282. It is recognized that the courts, while retaining the final authority to expound the statute, should avail themselves of the aid implicit in the agency's

> superiority in gathering the relevant facts and in marshaling them into a meaningful pattern. Cases are not decided, nor the law appropriately understood, apart from an informed and particularized insight into the factual circumstances of the controversy under litigation."

Thus, in this case, while the Court is bound by the factual findings made by the Commission, it does have the authority to review the interpretation of the statute at issue by the I.C.C. and the court below. Cf. 3 Davis, Administrative Law 45 (1958).

In this case, however, the Court need not substitute its interpretation of the statute, as it can confidently rely on the interpretation reached by the agency after exercising its specialized competence in determining and considering the relevant facts. The "courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of the statute." 1/

An objective analysis of the Commission's decision as reviewed by the Court below clearly shows the reasonableness of its interpretation of Section 1(9). The agency's ruling reflects a consideration of the facts and the statutory language. 2/ It also reflects a policy decision which should not be disturbed by this Court unless it is clearly beyond the scope of the Commission's statutory authority. See 5 U.S.C. Sec. 706(2)(C) and Atchinson T. & S.F. Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800, 805-807, (1973). Since the Commission's order is not clearly erroneous, it must be upheld by this Court.

1/ See Youakim v. Miller, 425 U.S. 231, 235 (1976), New York Department of Social Services v. Dublino, 413 U.S. 405, 421 (1973) and Investment Company Institute v. Camp, 401 U.S. 617, 626 (1971).

2/ Jt. App. 302a-310a.

CONCLUSION

There is no basis for overturning the Commission's decision under review. The appeal of the defendant Long Island Rail Road Company should be dismissed.

Dated at Washington, D.C. this 21st day of February, 1978.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February 1978, I have served copies of the Brief of The National Indstrial Traffic League upon counsel for all parties of record by first class mail, postage prepaid in the following manner:

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